



July 9, 2001

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-2930

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149181.

The Austin Police Department (the "department") received a written request for the following categories of information:

- 1) any written procedures, policies, guidelines, protocols and the like . . . promulgated by or adopted by [the department] relating to any quality assurance program, quality control program, and training procedures of technicians in the APD's laboratory's finger-print identification section; and
- 2) the results of any proficiency/competency/certification/qualification testing or examination of [a former department employee] (including, but not limited to raw data, summaries of exam results, and explanations of scoring) in the actual or constructive possession of [the department] for the last four (4) years related to [the employee's] competency in the field of finger print examination.

You contend that the requested information is excepted from public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

We note at the outset that the information you submitted as being responsive to item 1 above constitutes information that is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. *See* Gov't Code §§ 552.022(a)(8) (policies and procedures), 552.022(a)(13) ("a policy statement or interpretation that has been adopted or issued by an agency"), 552.022(a)(14) ("administrative staff manuals and instructions to staff that affect a member of the public"). The documents you submitted to this office therefore must be released pursuant to section 552.022 unless the information is expressly made confidential under other law.

Sections 552.103 and 552.108 of the Government Code are discretionary exceptions that do not constitute "other law" that makes information confidential for purposes of section 552.022. *See* Open Records Decision Nos. 542 (1990) ("litigation exception" does not implicate third party rights and therefore is waivable by a governmental body), 177 (1977) ("law-enforcement exception" waivable by governmental body). We therefore conclude that the "Standard Operating Procedures" you submitted to this office as being responsive to item 1 must be released in their entirety pursuant to section 552.022 of the Government Code.

On the other hand, the information you submitted to our office as being responsive to item 2 is not subject to section 552.022. We will therefore address whether the department may withhold those documents under one of the exceptions you raised. To secure the protection of section 552.103 of the Government Code, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation *to which the governmental body is a party*. Open Records Decision No. 588 at 1 (1991). You represent that the requested information relates to a pending criminal appeal. The department, therefore, is not a party to that litigation. However, in order to protect the litigation interests of the prosecuting attorney, and consistent with a previously established practice of this office, you submitted to this office a letter from the Travis County District Attorney's Office stating that the requested records relate to the pending criminal appeal and that the records should be withheld in order to protect the prosecutor's litigation interests. Given the representations of the district attorney, we conclude that the information you submitted as being responsive to item 2 relates to pending litigation and that the department may withhold those records at this time pursuant to section 552.103 of the Government Code.¹

In reaching this conclusion, we assume that the criminal defense has not previously had access to the information responsive to item 2; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records

¹Because we resolve your request under section 552.103, we need not address the applicability of section 552.108 of the Government Code.

Decision Nos. 349 (1982), 320 (1982). If the criminal defense has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/seg

Ref: ID# 149181

Enc. Submitted documents

c: Mr. Alexander L. Calhoun
Attorney at Law
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Austin, Texas 78736
(w/o enclosures)